

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9339 of 1995  
WITH SPECIAL CIVIL APPLICATIONS NO. 9340/95, 9341/41 AND  
9342/95.

Date of decision:

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHARWAD BIJOLBHAI KADWABHAI

Versus

STATE OF GUJARAT  
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Appearance:

None present for Petitioners

Mr. D. P. Joshi for Respondent No. 1, 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/09/97

ORAL JUDGEMENT

In all these special civil applications the issues raised are identical in nature and as such they have been taken up for hearing together and are being disposed of by this common judgment.

In petitions No.9339/95, 9940/95 and 9941/95, the petitioners purchased agricultural land in the sim of village Gadha from respondent No.2 by registered sale deed dated 5-3-1982. Necessary entries to this effect in favour of the petitioners have been made in the village form No.6 on 8-7-1982, which was duly certified by the competent authority on 31st August, 1982. The Collector has started suo moto enquiry into the aforesaid sale deed, and under order dated 17-8-1993 cancelled the entry made in favour of the petitioners in the revenue record. The petitioners preferred appeals before the Government which were dismissed on 29th March, 1995. Hence these special civil applications.

In special civil application No.9342 of 1995 petitioner No.3 is the brother of petitioners No.1 and 2. Name of petitioner No.3 was entered for 1/3rd share in agricultural land bearing survey Nos.168,169 and 170 of the sim of village Gadha, Taluka Modasa, District Banaskantha. Entry to this effect has been posted in village Form No.6, being Entry No.825 dated 13-6-1991 which was certified on 18-7-1991. In this case also Collector had started suo moto inquiry, and vide his order dated 7th August, 1993 the Collector cancelled the entry. The petitioners preferred appeal before the Government, which has been dismissed under order dated 29th March, 1995.

2. From the impugned orders it comes out that the State Government has cancelled the entries on the ground that the sale made in the first three cases as well as the transfer made in the last case by petitioner No.1 and 2 therein in favour of petitioner No.3 were illegal as they were not agriculturists. However, the counsel for the respondents does not dispute that all these petitioners are doing agricultural operations in the land and this land has not been utilised by them for any other purpose. It is true that at one point of time, i.e. in the year 1982 when the land was purchased in three cases and in the last case when transfer was made in favour of petitioner No.3, they would not have been agriculturists,

but this court cannot be oblivious of the fact that for all these years the petitioners are carrying on agricultural operation on the land and after 15 years it is now difficult to say that they are not agriculturists. The entry might have been objectionable at that time, but today their position cannot be that much objectionable.

3. In the last case it appears that two brothers have given part of their share to their own brother, and in other cases the petitioners purchased the land. The Collector and the State Government have taken strict view in the matter, but both have lost sight of the fact that they themselves are responsible for all this.

4. *Suo motu* action has been started against the petitioners in the year 1993 i.e. about 11 years after the sale deed was executed and certification of entry was made. In the first three cases 11 years were passed and thereafter when the petitioners were settled, the entry sought to be cancelled. It is not the case that the land was non transferable to non-agriculturists, but in that case permission of the competent authority was required. Therefore it cannot be said that the action was void ab initio, and action for cancellation should have been taken within reasonable time. It is true that the limitation is prescribed for taking action under section 108 of the Land Revenue Code, but still it has to be taken within reasonable time and it cannot be said that 11 years period is reasonable time. On this short ground these three special civil applications deserve to be accepted. So far as the fourth petition is concerned, petitioner No.3 is none other than real brother of petitioners No.1 and 2. Here two brothers have given their own share to the third brother and there cannot be any serious objection to this transaction. The petitioner No.3 might not have been an agriculturist at the time when entry was made, but it is not the case of the respondents that now he is not carrying on agricultural operations, or otherwise he has misused the transfer of the land. Brothers have not objected, which is another important consideration. In this case action has been started after 2 years and looking to the facts of this case delay of two years coupled with the fact that the land has been given by petitioners No.1 and 2 to their own brother this delay is fatal to the action taken against the petitioners.

5. In the result all these four special civil applications are allowed. Order of the Collector dated 7-8-1993 and the order of the State Government dated 29-3-1995 are set aside. Rule made absolute in all the

four petitions. No order as to costs.

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